

MAINE STATE HARNESS RACING COMMISSION
MINUTES OF MEETING
AUGUST 11, 2016

Conference Room, Gambling Control Board
Department of Public Safety
45 Commerce Drive, Augusta, ME

Commission Members Present: William Varney, Chair, Gary Reed, William McFarland, Michael Graham and Alex Willette

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Miles Greenleaf, Dennis May and Zachary Matzkin

1. Call the Meeting to Order and Introductions: William Varney, Chair

2. Review and Approval of Written Decisions and Orders

AAG, Guay stated that the decision and order for Michael Cayouette had already been issued and Mr. Cayouette had received the decision and order and found an error on the decision and order on the order part. After listening to the recording and verifying with Ms. Gauthier's notes, AAG, Guay corrected the decision and order to reflect that only \$100 is payable. Commissioner Varney asked for a motion on the decision and order for Mr. Cayouette. Commissioner Reed made a motion to approve complaint number 2015 MSHRC 089. Commissioner McFarland seconded. Vote 5-0.

AAG, Guay stated that before the Commission votes on the decision and order for Robert Cushing, he explained that this one is unusual because Mr. Cushing made a motion prior to the adoption of the decision and order. In fairness, AAG, Guay put in the decision and order a 10 day stay knowing that he was trying to get a motion for reconsideration. If the Commission does not want to do that, they can move for an adoption of the decision and striking out the last paragraph where it says "it is further ordered" or you can vote on the decision and order as presented. Commissioner Varney made a motion to accept the decision and order as written with the amendment. Commissioner Reed seconded. Vote 4-0.

Commissioner Varney asked for a motion on complaint number 2016 MSHRC 05 Wil DuBois. Commissioner McFarland made a motion to accept the decision and order as presented for complaint number 2016 MSHRC 05 for Wil DuBois. Commissioner Graham seconded. Vote 5-0.

Review and Approval of Minutes for February 25, 2016 and April 14, 2016

Commissioner Varney asked for a motion or discussion on the minutes for February 25, 2016 and April 14, 2016. Commissioner McFarland made a motion to accept the minutes of February 25, 2016 and April 14, 2016 as printed. Commissioner Willette seconded. Vote 4-0-1. Commissioner Graham abstained.

3. Adjudicatory Hearings:

- a. RE: Steven Vafiades, Complaint Number 2014 MSHRC 0017.** Mr. Vafiades is alleged to have violated MSHRC Rules Chapter 11 Section 8. Mr. Vafiades is trainer of record for the horse "Puzzlement". A blood sample obtained from Puzzlement following the Eighth Race at Scarborough Downs on July 25, 2014 disclosed the presence of Flunixin. Steven Vafiades was present and represented himself. AAG, Guay stated that the first hearing is a 2014 violation and just for purposes of some background around that. There were a number of individuals who had violations in 2014. The Commission had dealt with 8 to 10 individuals and technically what the Commission did is they continued the hearing and authorized the executive director to dismiss those complaints if the trainers had not been accused or had any violations of Chapter 11. There was a majority of people that went a year and if no further violations, they had their case administratively dismissed by the executive director. Mr. Vafiades case was in that group and he was found to have violated Chapter 11. The violation in case people are wondering is still 2014 and we are in 2016. The violation was related to cobalt and the cobalt cases took a year to

do so that's why we are here now. AAG, Guay opened up the hearing and gave Mr. Vafiades his oath. AAG, Guay qualified the Commissioners. The Commissioners answered no to both questions. AAG, Guay asked Mr. Jennings if he had an objection. Mr. Jennings stated no. AAG, Guay asked Mr. Vafiades if he had an objection. Mr. Vafiades stated yes. Mr. Vafiades asked if the 2014 violation was brought forward because of cobalt or the Ketoprofen. AAG, Guay asked if he is concerned about that what they could do is try the Ketoprofen violation. He thinks what he is asking is whether it's a matter of law that your cobalt cases are appealed whether or not the condition precedence to have this case brought back would be met. His legal advice would be that a motion was for a violation. He recognizes that he is raising an issue that if you were to prevail on your appeal you could then appeal this decision. For efficiency we can do the Ketoprofen cases first and by chance you have violated the Ketoprofen then that issue becomes moot. Mr. Vafiades stated yes. AAG, Guay asked Mr. Jennings if we close this hearing and take the Ketoprofen cases first and then come back to this one. Mr. Jennings stated that the conditions that the Commission adopted at the January 8, 2015 minutes that have been discussed today. Mr. Jennings read into record the January 8, 2015 minutes and presented this as Exhibit 9. AAG, Guay admitted the minutes without any objection from Mr. Vafiades. Mr. Vafiades stated that on page 1, first paragraph of the January 8, 2015 minutes it says the hearings will be continued until July 1st and any violation of Commission rules under Chapter 11 between now and July 1st would require a hearing. Mr. Jennings stated that his understanding of the difference of what Mr. Vafiades is citing is that the proposal that was made by the executive director at the time Henry Jackson to the Commission verses at the end of the minutes is what the Commission actually made for a decision. Mr. Vafiades asked whose statement was that there were allegations of violations would allow them to bring a hearing for the flunixin. Why would the language be changed if the executive director put forth that proposal on page 1. Why was that changed? Mr. Jennings stated that the Commission has the latitude to make whatever decision they feel is appropriate and that the executive director has the latitude to propose what he thinks is appropriate. AAG, Guay stated that the last sentence says he would grant the motion for a continuance on Mr. Vafiades, Mr. Miller, Mr. Hiscock, Mr. Hitchcock, Mr. Murchison and Mr. Ryder. These adjudicatory hearings will be continued until July 2015 meeting of the Maine State Harness Racing Commission with the stipulation that if no allegations of violation of the rules occur prior to July 1st for Mr. Vafiades, Mr. Miller, Mr. Hiscock, Mr. Hitchcock, Mr. Murchison and Mr. Ryder will be dismissed at the July meeting. AAG, Guay understood what was to happen is that they were going to be continued until a date certain. Any cases that where there's been no allegations then they would be dismissed. If there would have been an allegation in June then those cases would not have been dismissed. Mr. Vafiades stated since these were under appeal shouldn't this hearing have been put off until the appeal process has been exhausted. AAG, Guay stated no. The lack of allegations was for dismissal. It's not a bar from prosecuting. That's the difference. It's like under these circumstances the cases are automatically dismissed and nothing else has to happen. We have a very good record of the arguments right now. AAG, Guay stated that Mr. Jennings is opposing it so he will make a ruling on the motion. Mr. Jennings stated what's critical in determining whether this case comes back relates to the dates. These two cases are after July 1st. AAG, Guay stated that the motion is to continue this hearing and he understands that Mr. Vafiades has raised the issue for an appeal. AAG, Guay stated that we do these proceedings in two parts. The first part is whether or not there is a violation and the second part is if there is a violation what the penalty should be. AAG, Guay asked Mr. Vafiades if he stipulates to being the trainer of record of the horse Puzzlement; and that the horse raced in the eighth race at Scarborough Downs on July 25, 2014 and the horse Puzzlement on July 25, 2014 had an excessive level of flunixin in its system. Mr. Vafiades stated yes to the above. AAG, Guay stated that they will proceed to the second part of the hearing. He stated that the Commissioners do not need to make a finding on the violation because Mr. Vafiades admitted to the violation. AAG, Guay asked Mr. Jennings to move for the admission of the exhibits. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing for 2016; Exhibit 2, Notice of Hearing for 2014; Exhibit 3, 2014 License Application; Exhibit 4, Race Program; Exhibit 5, Notice of Positive Test; Exhibit 6, Sample Tag; Exhibit 7, Sample Shipment Sheet; Exhibit 8, LGC Lab Certificate of Analysis and Exhibit 10, ARCI Guidelines. AAG, Guay admitted the exhibits without objection. Mr. Jennings stated that flunixin in 2014 was considered a controlled medication under Chapter 17 that was in effect at the time. It was above the

threshold in Chapter 11 but in terms of a penalty that is recommended for a first offense for a controlled medication, the recommended penalty is a fine of zero to \$50 and a suspension of zero to 30 days and return of the purse. The department is taking the position of a minimum penalty of no fine, no suspension and return of the purse. AAG, Guay asked if flunixin was a permitted medication under the controlled medication program in 2014. The substance that was in the horse was a substance that was under the permitted medication program. The level was higher than permitted. Mr. Jennings stated correct. AAG, Guay stated as opposed to a prohibited substance that is something that is not supposed to be in the horse at all. Correct. Mr. Jennings stated correct. Mr. Vafiades stated that in 2014 he thought it was a warning for a first time violation. As far as the purse, he's not sure if there is any precedence for return of the purse. He had one of the lower overages on record. AAG, Guay asked for a copy of the rules that were in effect at the time for him and the Commissioners. He stated for purposes of this proceeding he asked Mr. Vafiades if the purse return was part of the penalty. Mr. Vafiades stated yes. AAG, Guay asked the Commissioners if they had any questions. No questions from the Commissioners. He closed the hearing for deliberations. Commissioner Reed agreed with the department's recommendation. Commissioner Graham stated that he would say that the return of purse be paid within 30 days and the horse not be allowed to race until purse is returned. Commissioner Graham made a motion on complaint number 2014 MSHRC 0017 that there be no fine, no penalty and the return of purse within 30 days or the horse is not allowed to race. Commissioner Reed seconded. Vote 5-0.

Mr. Jennings stated that the horse is not trained or owned by Mr. Vafiades and he was wondering if the Commission intends to prevent that horse from racing if the purse is not returned. Commissioner Varney asked if they can suspend the owners license that was the owner of record until the purse is returned. AAG, Guay stated that one of the parties needs to make a motion for reconsideration. Mr. Jennings stated that he moves for a motion to reconsider the penalty described in their decision. AAG, Guay stated the motion is granted without objection. He stated that technically in the rules the motion for reconsideration is on two grounds. That is whether or not there is additional facts or that the Commission did not intend to give the decision that it did. Commissioner Varney stated that there is additional information if the person that owns the horse on longer owns it. Commissioner Willette stated he thinks they made an error in their decision to because the rule states the horse is to be suspended as well. The horse is the entity that supposed to be suspended not the owner of the horse. Under Section 6 for the penalties for the horses and owners, the horse is supposed to be suspended for 30 days; we as commissioners erred in not having that in their order. Commissioner Varney asked Mr. Jennings that the rules says we can't suspend just the owner. Mr. Jennings stated right, these are the penalties that apply to the horses. Mr. Vafiades asked if that has ever been applied before. AAG, Guay stated that the Commission would routinely not suspend horses. Commissioner Varney stated that he has a problem suspending a horse that someone else bought and paid for. AAG, Guay stated can you suspend an owner. The owner would have to have violated a rule to have done something that requires them to be punished and under the regulatory scheme the insurer of the condition of the horse pertaining to drugs and prohibited substances is squarely the trainer not the owner. Commissioner Willette stated looking at the plain language of the rule, they don't have an option. The rule says the following guidelines shall be used to establish a minimum and maximum penalty for violation of the prohibited substance rule. The minimum and maximum for the controlled medication line is the suspension of the horse for 30 days. Anything but that would be an illegal sanction. AAG, Guay stated that there were two notices issued in this case. One to Steven Vafiades and one to Jason Vafiades. He asked Mr. Jennings why he issued notice of hearings to both of these individuals. Mr. Jennings stated that it is the practice of the commission staff to notify both the trainer and the owner(s) of the horse. AAG, Guay asked Mr. Jennings how he establishes who the owner of that horse is. Mr. Jennings stated that it is based on the race program on the date of the race. AAG, Guay stated that a notice of hearing was sent to Jason Vafiades on July 28, 2016 indicating today's hearing. You can take action against the interest of the owner if the owner has been notified of the hearing. That is different than finding the owner in violation, so as a consequence of the rule, the horse can't race. The owner was provided notice, the owner could be here, the owner had the opportunity to be forewarned that his horse might not race. AAG, Guay stated that you can't suspend the owner unless the owner has done something under the rules and you can prove that violation. You can suspend the horse. Commissioner Graham

stated what if he no longer owns the horse you have no come back. AAG, Guay stated that is something you will need to decide. Mr. Vafiades stated that if he states that his brother would pay the purse back, would that quicken things up. AAG, Guay stated that if the owner today that owns the horse did not receive notice that would be a problem. It's the same issue. The person that could have a property interest is effected like a horse not racing; they need to be aware of this proceeding today. They need to be aware that their horse could be affected. He did not know there was a different owner. There is a potential motion to set the horse down. If the horse is going to get set down now who ever owns that horse now needs to be aware that they are going to face that consequence. Commissioner Varney stated that if they are going to do that, you aren't going to have anybody buy or claim horses. We don't have a choice but to take Mr. Vafiades word that his brother will pay back the purse. Commissioner Willette stated that by violating this rule, put in jeopardy all the other decisions that we made by this rule. A rule by not setting the horse down for 30 days would be the Commission itself violating this rule. AAG, Guay asked if the rule is stated as a guideline. Commissioner Willette stated yes. AAG, Guay stated that the former Commissioners saw this section as guidelines and that they had the ability to move around in them. On the lower level the control medication violations, horses weren't always set down. In terms of precedence, we don't have this rule anymore and any parties aggrieved previously under the old rule are probably way beyond their 30 days of appeal; and you need a party that is aggrieved. Commissioner Graham asked if they could find that Mr. Vafiades was in violation. AAG, Guay stated that you can't find someone who didn't pay a fine prior to the date when the fine was due; so if someone owes a fine, a return of purse within 30 days today. You have to come back because they have 30 days to pay it. Commissioner Varney stated that if the purse is not paid back within 30 days we could bring a violation against the owner of record at the time the horse had the violation for not paying his fine and suspend him then; is that correct? AAG, Guay stated that is correct. Mr. Vafiades asked if Jason Vafiades would have the right of appeal. AAG, Guay stated sure. Once the decision and order is approved by the commissioners, there is a 30 day appeal period. Commissioner Graham made a motion reference Steven Vafiades complaint number 2014 MSHRC 0017 that they find no penalty for the trainer, no fine, no suspension of the horse and the return of purse for the owner of record at the time of the violation within 30 days. Commissioner Reed seconded. Vote 4-1. Commissioner Willette opposed.

- b. RE: Steven Vafiades, Complaint Number 2015 MSHRC 063.** Mr. Vafiades is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Vafiades is the trainer of record for the horse "Real Special". A blood sample obtained from Real Special following the Eleventh Race at Bangor Raceway on July 21, 2015 disclosed the presence of Ketoprofen. Steven Vafiades was present and representing himself. AAG, Guay qualified the Commissioners. Commissioners stated no to the questions for complaint numbers 2015 MSHRC 063 and 065. These two cases would be taken as separate violations. Mr. Vafiades stated that there is no objection to having one proceeding. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearings; Exhibit 2, Trainer Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, MSHRC Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Lab Certificate of Analysis, Exhibit 8, Confirmation Test at California; Exhibit 9, Email from Dr. Stanley from California and Exhibit 10, ARCI Guidelines. AAG, Guay asked Mr. Vafiades if he had an objection to the exhibits. He issued an order to try to cure some concerns amongst the parties. Mr. Vafiades stated that he has no objection to Exhibits 1, 2, 3, 4, 5, 6 and 10. He objects to exhibits 7, 8 and 9. AAG, Guay asked the Commission members to please leave the room while he asked questions to Mr. Vafiades regarding his objection to exhibits. Mr. Vafiades stated that he had 48 hours to tell the Commission that he wanted a split sample. He sent the money order and four and a half months later he asked about the split sample and the sample had been sitting in the LGC lab. According to the rules that was to be shipped within 72 hours. He received a cover letter from Mr. Greenleaf about the split sample being significantly hemolyzed. Mr. Vafiades doesn't think either test is reliable. AAG, Guay stated that he can make those types of arguments to the Commission. Mr. Vafiades stated that he didn't get answers to his questions until the day of his hearing. AAG, Guay stated that statements from the lab is ok, but not without certain protections. The LGC lab results was 16 and the California lab results was 24.8. Dr. Stanley stated that the sample was significantly hemolyzed. Dr. Stanley also stated that the hemolyzed sample would be lower. Is that correct? Mr. Jennings

stated that would be correct but the level at which it would be lower is probably is somewhat insignificant. We are just talking about the liquid content of the hemolyzed red blood cells adding to the overall volume of the liquid. AAG, Guay asked if the UC Davis level be lower than 16. Mr. Jennings stated that it would be better to call a witness to address that question. AAG, Guay stated that there is a lab report. There was an objection because Mr. Vafiades wanted to ask questions. He asked questions and the answers raise issues that the department has the opportunity to explain because you have a witness. Mr. Vafiades got these answers at 7:30 this morning and he doesn't have a witness here to be able to address this. It seems to him that there is some potential prejudice here in terms of this evidence meaning Mr. Vafiades wanted the expert available to be cross-examined. Mr. Vafiades stated that if these samples were significantly hemolyzed and that was because of the drawing process because Dr. Stanley says that the LGC sample could have been more hemolyzed. That doesn't make sense. AAG, Guay stated that Mr. Vafiades made another point. He referred to Chapter 11, Section 1, Subsection 7 regarding the split sample. Mr. Jennings stated that Chapter 11 puts a certain burden on the department under subsection 7. Mr. Vafiades stated that the lab is employed by the department. It's called a tracking number or a phone call to find out if the split sample was sent out in 72 hours. Mr. Jennings stated that the department shall ship the split sample in accordance with procedures developed by the department to maintain the efficacy of the sample and chain of custody to the designated approved laboratory within seventy-two hours of receiving the request. The department made the request to have the sample shipped to UC Davis within the allowed time frame. AAG, Guay asked if the sample was shipped within 72 hours. Mr. Vafiades stated that he sent an email just asking about the results but the sample hadn't been shipped as of December 9, 2015 and he got the results December 30, 2015. Mr. Jennings stated that the blood was not shipped within 72 hours. AAG, Guay stated that failure to ship the split sample, the rule requires 3 days but it was over 4 months. That's a significant deviation from this right. Mr. Jennings stated that he believes the rule contemplates that the split sample would be in the possession of the department. AAG, Guay stated that it doesn't matter but this rule protects is someone who is accused of a drug violation to have their sample tested at another lab. He stated that the department violated the rule. The split sample is the only defense that the violator has in a drug case. He stated that he is going to recommend to dismiss the case for lack of due process. The Commissioners returned to the room. AAG, Guay stated that the general regulation of prohibited substances is in Chapter 11, but there is a presumption in the rules that if somebody has a test/lab finding, the presumption is that the horse carried in its system that substance; so that means the state doesn't have to prove that other than by submitting the lab analysis. The lab analysis is in itself is proof that the prohibited substance was in the animal. There is a procedural protection is that given the fact the lab test creates the presumption that there is a right to a split sample. He thinks that for purposes of his recommendation, a split sample was requested and paid for and the rule requires that the split sample be shipped out within 72 hours. His understanding in this case is that the split sample was not sent for over 4 months. His recommendation is that the case be dismissed and the reason for that is given the fact that a lab test creates the presumption that an animal had the prohibited substance which is a very difficult thing to defend against. It would appear the rules do provide a defense which is the split sample testing. AAG, Guay's interpretation is that a 4 month delay in shipping the sample is a material violation of that protection that is found in the rules; whether or not it would have made a difference or not the rule says 72 hours. Now he will caution he is not saying that in other cases that he would recommend to you; for example, if it was 2 weeks, a week and a half but given the fact that the rule says 3 days and in this case the sample wasn't shipped for 4 months. In his view, that is a material and egregious violation of the rule and because of that the licensee was not afforded a protection or put that remedy at risk. There must be a reason it's 72 hours and not 4 months. Mr. Jennings stated that the department is respectful and mindful of the rights of the licensee. It was not caused by the department but by the laboratory that had the sample at the time. Someone forgot to ship the sample. What the department is concerned about is precedence. If the Commission issues a decision in which it holds the department responsible for shipping the split samples within 72 hours even if they don't have possession of the sample, then what he foresees is the lesson learned by the regulating community is request your split sample because there's a reasonable probability that there's no plausible or feasible way that can be shipped within 72 hours. Mr. Vafiades has made some reasonable arguments and his rights were not accorded him. Mr. Jennings is

concerned about the precedence that you set and the rule as it's written right now is one that places an unreasonable burden and impediment on the department's ability to enforce the medication law. Mr. Vafiades stated that he was given a list by Mr. Greenleaf of the labs for a split sample. They knew where the split sample would be shipped. Mr. Vafiades had 48 hours to make a decision and send the money. Four months later he notified the department that he hadn't received a notice from California Davis about his split sample. LGC had forgotten to send the split sample. Mr. Jennings stated that it might be true about Ketoprofen but it is not true with other analgesics. They have to call around to find out which lab is willing and capable of analyzing the product. Commissioner Willette asked Mr. Jennings if he received confirmation from the lab that they received your order to send it to California. Mr. Jennings stated that Mr. Greenleaf does that by email. Commissioner Willette asked if the split sample test ever occurred. Mr. Jennings stated yes. AAG, Guay stated that if the case is not dismissed they would get into the test results. Commissioner Reed made a motion to dismiss the case. Commissioner Varney seconded. Vote 3-2. Commissioners Willette and McFarland opposed.

- c. **RE: Steven Vafiades, Complaint Number 2015 MSHRC 065.** Mr. Vafiades is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Vafiades is the trainer of record for the horse "Real Special". A blood sample obtained from Real Special following the Ninth Race at Scarborough Downs on July 25, 2015 disclosed the presence of Ketoprofen. Steven Vafiades was present and represented himself. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Trainer License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Lab Certificate of Analysis and Exhibit 8, ARCI Guidelines. AAG, Guay admitted these exhibits with no objections. He asked Mr. Vafiades if he stipulated to being the trainer of record of the horse Real Special and that the horse raced on July 25, 2015 in the ninth race at Scarborough Downs and that the horse had in its system Ketoprofen. Mr. Vafiades stated yes to the stipulations. Mr. Jennings stated that this would be a Class C penalty and recommended a written warning to the trainer and owner. AAG, Guay closed the hearing for deliberations. Commissioner Reed made a motion to give a written warning to the trainer and owner of the horse. Commissioner Graham seconded. Vote 4-1. Commissioner Willette opposed.
- d. **RE: Frank Petrelli, Complaint Number 2015 MSHRC 082.** Mr. Petrelli is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Petrelli is the trainer of record for the horse "Onesportonly". A blood sample obtained from Onesportonly following the Sixth Race at the Oxford Fair on September 19, 2015 disclosed the presence of Methocarbamol. Frank Petrelli was not present. He was available by conference call. AAG, Guay opened the hearing on Frank Petrelli. He qualified the Commissioners. The Commissioners responded no to both questions. AAG, Guay asked Mr. Petrelli if he stipulated to being the trainer of record of the horse Onesportonly, and that the horse raced in the sixth race at Oxford Fair on September 19, 2015. Mr. Petrelli stated yes to the questions above. AAG, Guay asked if he stipulated to the horse having the prohibited substance Methocarbamol in its system. Mr. Petrelli stated no. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Notice of Positive Test; Exhibit 3, Sample Tag; Exhibit 4, Sample Shipment Sheet; Exhibit 5, LGC Lab Certificate of Analysis; Exhibit 6, Trainer License Application; Exhibit 7, Race Program; Exhibit 8, ARCI Guidelines and Exhibit 9, Email from Mr. Petrelli. Mr. Petrelli had no objection to the admission of the nine exhibits. AAG, Guay admitted the exhibits. He gave Mr. Petrelli his oath. Mr. Jennings stated that the test result shows that the prohibited substance was in the horse's system. Exhibit 5, LGC Certificate indicates that on page 3. Mr. Petrelli stated that the veterinarian prescribed the substance. AAG, Guay gave Mr. Greenleaf his oath. Mr. Greenleaf stated that the level was over by .9. Mr. Petrelli stated that the substance metabolizes in horses differently and it was used after the last race as a therapeutic method. Mr. Jennings asked Mr. Greenleaf if the department publishes withdrawal guidelines. Mr. Greenleaf stated no. Mr. Petrelli asked Mr. Greenleaf where do practicing veterinarians get these withdrawal times from. Mr. Greenleaf stated that you have to ask your veterinarian. AAG, Guay asked the Commissioners if they had any questions. They had no questions. The hearing was closed for deliberations. Commissioner Varney asked for discussion or a motion. Commissioner Willette made a motion to find Mr. Petrelli in violation of the rule on complaint number 2015 MSHRC 082. Commissioner McFarland seconded. Vote 5-0. AAG, Guay stated to Mr. Petrelli that the

Commission did find a violation. Mr. Jennings stated that the department will remain consistent with the policy of recommending the minimum required by the rule. It is a Class C violation which comes out to be a Category C penalty which will give it a \$500 fine and the return of purse. Mr. Petrelli stated to the Commission that methocarbamol was given by the withdrawal times which were recommended by the veterinarian. AAG, Guay closed the hearing on the penalty phase for deliberations. Commissioner Varney asked for discussion or a motion. Commissioner Graham made a motion to give a \$500 fine and the loss of purse for Mr. Petrelli. Commissioner Willette seconded. Vote 5-0.

- e. **RE: Reopening the 2016 Race Date Hearing.** Pursuant to 8 M.R.S. § 271, § 275-N and Commission Rule Chapter 19, Section 10, the Commission may reopen the race dates and licensing hearing upon a motion of a licensee to take testimony relative race dates and/or conditions on a license. AAG, Guay stated that Scarborough Downs is requesting for the limited purpose to amend their license from a one year term to a two year term. Denise Terry, Ed MacColl and Michael Sweeney represented Scarborough Downs. Absent were Northern Maine, Skowhegan, Topsham, Union, Windsor, Oxford, Farmington, Cumberland and Fryeburg Fairs. HC Bangor, LLC, MHHA, MSBOA and the Maine Agricultural Fair Association was present. Mr. Jennings presented the following exhibits. Exhibit 1, Letter from MHHA; Exhibit 2, Scarborough Downs amended application; Exhibit 3, 2016 Decision and Order; Exhibit 4, 8 MRS, Section 271; Exhibit 5, Letter from Scarborough Downs; Exhibit 6, Newspaper Ad and Exhibit 7 Notice of Hearing. AAG, Guay asked if there are any documents that need to be held under seal. Mr. Jennings stated yes the financials from Scarborough Downs, Exhibit 2A. There were no objections to the exhibits. Mr. MacColl stated that Scarborough Downs is requesting to race 75 days for next year and they would not race days that will affect the fairs. He stated that they were hoping to have the statute changed but that didn't happen. He stated that he wasn't sure what the MHHA is looking for. Mr. Jennings stated that the department would like to reference Title 8, Section 263-B department responsibilities in offering a position. The department takes no position relative to the request from Scarborough Downs because it doesn't appear appropriate to advocate for or against for a particular entity. The department tries to ensure that the industry as a whole survives and is viable. AAG, Guay stated to Mr. Jennings that he thinks the commission needs to take a position. Mr. Jennings stated that he cannot point to any one particular portion of the criteria listed under 271 to say that they do not qualify or meet those conditions. AAG, Guay asked if any other party that wished to make an argument. Don Marean a director of the MHHA stated that he is not opposed of the idea here but they would like to raise their concerns about the process. They thought 2017 licensing will be in a month or so. The horsemen don't receive any compensation for doing what it is that they do. Yet a commercial track when they passed LD 1820, we wanted to be sure that the commercial tracks had an opportunity to be able to compete against the gaming things that were coming around them. So they put in the 4 % money to encourage racing at commercial track. Scarborough Downs gets two-thirds of that and all they have to do is get a license to race without any risk. Mr. Marean stated that he encourages the Commission to strongly look at the horsemen's side of the equation. They make much more of an investment individually than Scarborough does with very little chance of getting any money back at all. The 4 % money practically guarantees that Scarborough Downs is going to get approximately 1.2 million for racing. Shortening the days is not where we should be going. The horsemen had a meeting and they voted unanimously that reduction of days is not good for the industry. AAG, Guay gave oath to Denise Terry and Michael Sweeney. Mr. MacColl asked questions of Ms. Terry regarding the daily operations. Mr. Higgins asked why they would put out a race card that couldn't be filled on one day and continue to do the same for the next week. Mr. Sweeney stated that if they had changed the condition sheet to absolutely insure being able to race on a Friday at 1:00 p.m., it is his opinion that when it came time to draw for Saturday or Sunday card they would have had to cancel one of those performances. The horse supply was not adequate to support three days of racing at that time. The discussion continued on the purse account, the 4% fund money and the trust account. Commissioner Willette asked if they can issue a license to a private entity. AAG, Guay stated that in order to grant a license you need to make a finding that they have complied with the law. He closed the hearing for deliberations. Commissioner Graham and Commissioner Willette agreed to have Scarborough Downs come back at the

regular race date hearing. AAG, Guay stated that they would table the hearing until the regular race date hearing.

4. Other Business:

Motion to reconsider sanctions imposed to Valerie Grondin.

Commissioner Varney stated that they would move to Ms. Grondin's motion. Mr. Jennings asked to table this issue. AAG, Guay stated that the best way to deal with this is to withdraw the motion. You can ask Ms. Grondin to send in a letter in writing to withdraw the motion.

Commissioner Varney stated that the paperwork has come in to approve Mr. Jennings as the acting executive director. Commissioner Willette made a motion to confirm Mr. Jennings as the acting executive director. Commissioner McFarland seconded. Vote 5-0.

5. Public Comment

Commissioner Varney asked for public comment. Ronald Merrill is an associate judge at many of the fairs. He asked to discuss the rule Chapter 3, Section 4 Officials Restrictions. He asked to allow him to race his horse at the fairs while one of the officials steps in during that race. Mr. Merrill is asking this for the reason that there is a shortage of horses after working at Northern Maine Fair. He is asking that they continue as they have in the past to work but you have to sit down for that race. Commissioner McFarland stated that this has been done in the past. Mr. Sweeney agreed with Commissioner McFarland. Mr. Sweeney also stated that Mr. Smith came before the Commission and the Commission flatly denied his request. They stated that he had to make a decision if he would be an official or a horseman for that day. Mr. Merrill stated that the times have changed. AAG, Guay stated that he doesn't see how this body can grant exemptions from rules for some people, especially judges and not have an equal application of the rules for everyone.

Mr. Merrill stated that the purse needs to be \$3,000.00 for a trifecta to occur with 5 horse fields. Can the rule be changed for the purse to be \$2,500.00? Mr. Sweeney stated that he totally agrees with Mr. Merrill. We really need to get to rulemaking. Commissioner Varney asked what they need to do. Mr. Jennings stated that if you want to amend the rules, he can initiate rulemaking. AAG, Guay stated that he strongly suggest to prioritize and possibly for example getting the ARCI incorporated.

6. Schedule of Future Meetings:

August 25, 2016

September 8 and 9, 2016

October 13 and 21, 2016

November 18, 2016

December 8, 2016

Commissioner McFarland made a motion to not have August 25, 2016 as a scheduled meeting due to staff no being present. Commissioner Graham seconded. Vote 5-0.

Commissioner Graham asked for the next meeting if he could have a list of purses that need to be paid back.

8. Adjourn

2:35 p.m.